

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID M. FICKES,

Defendant.

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Case No. 07-CR-30087-05-MJR

MEMORANDUM AND ORDER

REAGAN, District Judge:

On June 20, 2007, Fickes was indicted with conspiracy to manufacture and distribute 500 grams or more of a substance containing methamphetamine (count 1).¹ On August 2, 2007, Fickes filed a motion to determine his mental competency to stand trial as well as his possible insanity at the time of the alleged offense. On September 24, 2007, pursuant to 18 U.S.C. §§ 4241, 4242, the Court found that there was reasonable cause to believe Fickes might be suffering from a mental disease or defect rendering him unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Accordingly, a psychological examination was ordered (Doc. 63) and an extension of the evaluation period was later granted (Doc. 142).

On January 16, 2008, the Court received a Competency to Stand Trial Evaluation and a Criminal Responsibility Evaluation from Dr. Elissa R. Miller and Dr. William J. Ryan (Sealed

¹ Trial was originally set for August 20, 2007. The case has been continued various times by Fickes and his co-defendants (Docs. 70, 111, 140, 181, 202 & 243) and is currently set for trial on Monday, October 27, 2008.

Doc. 148). Dr. Miller and Dr. Ryan stated that Fickes was competent at the time of the offense. However, they opined that he was not competent to stand trial due to a mental disease. After a hearing on February 7, 2008, the Court committed Fickes to the custody of the Attorney General for hospitalization and treatment (Doc. 162).

A competency hearing was initially set for May 15, 2008. However, after learning that Fickes did not arrive at the facility until March 13, 2008, the competency hearing was continued to July 25, 2008 (Doc. 201). The facility submitted its forensic report on July 24, 2008 (Sealed Doc. 208). Therein, Dr. Lee Ann Preston noted that Fickes is highly uncooperative, refuses to consistently take his medications, and often indicates a desire to commit suicide. Nonetheless, Dr. Preston concluded that Fickes is competent to proceed to trial at this time.

Fickes was unavailable for the scheduled competency hearing on July 25, 2008 because he was on suicide watch. Accordingly, the competency hearing was reset for 1:30 p.m. on September 12, 2008 (Doc. 209). However, that setting was converted to a hearing on the status of counsel, after Fickes requested a new attorney and counsel sought to withdraw (Sealed Docs. 207 & 248). Ultimately, the Court appointed new counsel and reset the competency hearing for September 25, 2008 (Doc. 252).

At the September 25, 2008 hearing, Fickes stated that he did not wish to contest his competency. The undersigned District Judge observed Fickes and spoke with him. Fickes explained that his condition has improved and that he now regularly and consistently takes the medication prescribed for him. He appeared alert and aware. Fickes also indicated that he understands the nature of the proceedings and is capable of assisting his counsel with his defense.

The Court takes judicial notice of Dr. Preston's forensic report (Sealed Doc. 208).

In light of the report and the Court's observation of Fickes at the hearing, the Court **FINDS by a preponderance of the evidence** that Fickes has recovered to such an extent that he is now able to understand the nature and consequences of the proceedings against him and to assist properly in his defense. *See* **18 U.S.C. § 4241(e)**.

A Final Pre-Trial Conference has been set for 11:00 a.m. on October 15, 2008 (Doc. 254). Additionally, the jury trial remains set for 9:00 a.m. on October 27, 2008 (Doc. 243).

IT IS SO ORDERED.

DATED this 25th day of September 2008.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge